



# County of Los Angeles CHIEF EXECUTIVE OFFICE

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WILLIAM T FUJIOKA  
Chief Executive Officer

June 20, 2014

Board of Supervisors  
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MARK RIDLEY-THOMAS  
Second District

ZEV YAROSLAVSKY  
Third District

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Fourth District

MICHAEL D. ANTONOVICH  
Fifth District

To: Supervisor Don Knabe, Chairman  
Supervisor Gloria Molina  
Supervisor Mark Ridley-Thomas  
Supervisor Zev Yaroslavsky  
Supervisor Michael D. Antonovich

From: William T Fujioka  
Chief Executive Officer

A handwritten signature in black ink, appearing to read "W. T. Fujioka", with a long horizontal line extending to the right.

## SACRAMENTO UPDATE

### Executive Summary

This memorandum contains reports on the following:

- **Pursuit of County Position to Oppose AB 2471 (Frazier).** This bill would require State and local governmental entities engaged in a public works contract awarded to the lowest bidder to promptly issue change orders when extra work is required of the contractor or subcontractor. Therefore, unless otherwise directed by the Board, because it is contrary to existing Board policy to support legislation to preserve and improve the County's ability to solicit and manage construction contracts and or job order contracts, **the Sacramento advocates will oppose AB 2471.**
- **Pursuit of County Position to Oppose AB 2493 (Bloom).** This bill would allow redevelopment successor agencies and housing successors to commit remaining proceeds from redevelopment bonds issued between January 1, 2011 and June 28, 2011 for previously planned projects that are consistent with a region's sustainable communities strategy. Therefore, **unless otherwise directed by the Board, consistent with existing policy to oppose proposals that would eliminate or reduce or delay the flow of any source of funds allocated to taxing entities by ABx1 26 (Chapter 5, Statutes of 2011) as amended by AB 1484 (Chapter 26, Statutes of 2012), the Sacramento advocates will oppose AB 2493.**

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*"To Enrich Lives Through Effective And Caring Service"*

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### **Pursuit of County Position on Legislation**

**AB 2471 (Frazier)**, which as amended on May 23, 2014, would require State and local public entities engaged in a public works contract awarded to the lowest bidder to promptly issue change orders when extra work is required of the contractor or subcontractor. Specifically this bill would: 1) require a public entity when authorized to order changes or additions to the work in a public works contract awarded to the lowest bidder, to issue a change order promptly, and no later than 60 days after the extra work is performed and reasonable documentation has been submitted, except as specified; 2) make the public entity liable to the original contractor for the extra work that has already been performed, if this requirement is not met; 3) require prejudgment interest to accrue on any amount for which the public entity fails to issue a change order promptly or make a payment due pursuant to this bill; 4) authorize an original contractor to present to the public entity a request for a change order for extra work performed by a subcontractor, including a lower tier subcontractor; 5) authorize a subcontractor to request that an original contractor present a change order request for extra work directed by the public entity that was performed by the subcontractor or lower tier subcontractor; and 6) require the original contractor to notify the subcontractor as to whether the original contractor presented the request to the public entity, as specified.

For purposes of this bill, extra work includes extra work performed by the original contractor, a subcontractor, or a lower tier subcontractor. Extra work also includes work or requirements that differ from those under the public works contract with the public entity before the amendment of the contract by the change order.

The Department of Public Works (DPW) reports that AB 2471 would adversely impact its construction operations and would place unreasonable timelines on the change order negotiation process. The bill would also significantly increase the financial and legal risks associated with public works construction projects.

According to the Department of Public Works, when a contractor encounters a changed or unexpected condition, provisions of the County's contract require the contractor to promptly notify the agency of the possible change. DPW will then provide the contractor with one of the following three possible responses, each with a remedy that serves to keep work on the project moving forward:

- 1) The Department of Public Works determines the change reported by the contractor is not a changed condition and it is, rather, within the contracted scope of work. In this case the contractor can accept this decision or perform the work under dispute and subsequently file a claim. Ultimately, claims are resolved and it has been DPW's experience that they rarely advance to litigation;

- 2) The reported change is determined to be a change in the scope of work and the contractor and agency successfully negotiate and execute a change order. If it is outside of delegated authority limits, the change order is adopted by the Board of Supervisors. The time to negotiate a change order and ultimately have it approved by the Board can be several weeks. However, in DPW's experience, the timeline for this to occur should not pose much, if any, hardship for contractors that do business with the County; or
- 3) The reported change is determined to be a change in scope of work but DPW and the contractor cannot agree on the impact. Consequently, DPW issues a unilateral change order. The unilateral change identifies the scope and cost of work, and the contractors reserve the right to contest the amount provided in the unilateral change order.

The Department of Public Works reports that current law requires direction from the agency based on a change perceived by the contractor. If an agency does not provide direction timely, which DPW defines in its contracts, the contractor is not required to proceed with the perceived extra work. Similarly, no perceived extra work should commence until the agency provides written direction to the contractor. DPW indicates that there appears to be no rationale to change this agency-contractor relationship associated with defining and ultimately compensating for perceived extra work.

The Department of Public Works and this office oppose AB 2471 because it would adversely impact DPW's construction operations, place unreasonable timelines on the change order negotiation process, and significantly increase the financial and legal risks associated with public works construction projects. Therefore, unless otherwise directed by the Board, because it is contrary to existing Board policy to support legislation to preserve and improve the County's ability to solicit and manage construction contracts and or job order contracts, **the Sacramento advocates will oppose AB 2471.**

AB 2471 is sponsored by United Contractors, and supported by: American Subcontractors Association; Building Industry Credit Association; California State Association of Electrical Workers; California State Council of Laborers; State Building and Construction Trades Council (AFL-CIO); and California Legislative Conference of the Plumbing, Health and Piping Industry, among others.

This bill is opposed by: California Association of Sanitation Agencies; California Special Districts Association; California State Association of Counties; County of San Bernardino; League of California Cities; Newhall County Water District; Rural County Representatives of California; and Urban Counties Caucus, among others.

AB 2471 is scheduled for hearing in the Senate Governmental Organization Committee on June 24, 2014.

**AB 2493 (Gordon)**, which as amended on June 10, 2014, would: 1) authorize a redevelopment successor agency or housing successor entity to designate the use of, and commit, proceeds from indebtedness that was issued for affordable housing or redevelopment purposes prior to June 28, 2011; and 2) require the proceeds from bonds issued between January 1, 2011 and June 28, 2011, be used for projects meeting certain criteria established in this bill, to be funded by successor agencies generally, from proceeds of bonds issued during the same period.

Existing law dissolved redevelopment agencies and community development agencies, as of February 1, 2012, and provides for the designation of successor agencies to wind down the affairs of the dissolved redevelopment agencies and the transfer of housing assets and functions previously performed by the dissolved redevelopment agency to specified public entities. The successor housing entity is authorized to designate the use of, and commit, proceeds from indebtedness that were issued for affordable housing purposes prior to January 1, 2011. A successor agency, upon receiving a finding of completion from the Department of Finance, is then required to expend excess proceeds derived from bonds issued on or before December 31, 2010, in a manner consistent with the original bond covenants.

AB 2493 would allow redevelopment successor agencies and housing successors to commit remaining proceeds from redevelopment bonds issued between January 1, 2011 and June 28, 2011 for previously planned projects that meet the following specified criteria:

- The project is consistent with a region's sustainable communities strategy, designed to achieve the State's targets for GHG emission reduction.
- Two or more of the following "significant planning or implementation actions" occurred on or before December 31, 2010:
  - The former redevelopment agency, the city, or the planning commission approved an action directly related to the planning or implementation of the project.
  - The project is included within an approved city or redevelopment agency planning document.

- The city, county, or project sponsor has expended more than \$25,000 on planning-related activities for the project within one fiscal year or \$50,000 in total over multiple fiscal years.
- The successor agency or housing successor provides documentation dated December 31, 2010, or earlier, indicating the intention to finance all or a portion of the project with the future issuance of long-term debt or indicating that the issuance of long-term redevelopment agency debt was planned by December 31, 2010.
- Each construction contract over \$100,000 includes a provision requiring that the contractor and all of that contractor's subcontractors pay prevailing wage.
- For each construction contract over \$250,000, the successor agency requires prospective contractors to submit a standardized questionnaire and financial statements as part of their bid package to establish the contractor's financial ability and experience in performing large construction projects.

According to the author's office, during the first half of 2011, approximately 50 redevelopment agencies issued bonds for projects prior to passage of the legislation that dissolved redevelopment agencies and established a cutoff date for the use of redevelopment bond proceeds of December 31, 2010. The author's office indicates that 37 successor agencies and housing successors have remaining bond proceeds that they are not allowed to use.

The Senate Transportation and Housing Committee analysis of AB 2493 reports that the Department of Finance has asserted that the successor agencies must defease the vast majority of the 2011 redevelopment bonds; however, over 90 percent of these bonds cannot be defeased for 10 years. During this 10-year period, nearly \$1 billion will be spent on the debt-service payments for these bonds, and the bond proceeds will continue to go unused. If the proceeds were used for their intended purposes, the construction of these projects would generate over \$1.2 billion in statewide economic activity, more than the debt-service payments during the 10-year period. With respect to tax-exempt bonds (approximately 70 percent of the bonds in question), using these bond proceeds for their intended purpose will also ensure the continued tax-exempt status that bondholders expect.

County Counsel indicates that permitting the use of bond proceeds issued in the first half of 2011 would extend the debt service that would have to be paid as an enforceable obligation for up to 30 years. This would, in turn, reduce the amount of property tax revenues available for County use to pay off other approved enforceable obligations or for distribution to other taxing entities as residual property tax revenues.

As indicated in the chart below published by the California State Treasurer, 10 agencies in Los Angeles County issued over \$260.1 million in redevelopment bonds after December 31, 2010.

Issuer	Sale Date	Principal Amount	Purpose
Cudahy Community Development Commission	04-14-2011	\$11,205,000	Redevelopment, multiple purposes
Culver City Redevelopment Agency	03-01-2011	\$33,585,000	Redevelopment, multiple purposes
Culver City Redevelopment Agency	03-01-2011	\$13,827,887	Redevelopment, multiple purposes
El Monte Public Financing Authority	03-08-2011	\$10,000,000	Redevelopment, multiple purposes
Glendale Redevelopment Agency	04-07-2011	\$50,000,000	Redevelopment, multiple purposes
Lynwood Redevelopment Agency	03-07-2011	\$18,480,000	Redevelopment, multiple purposes
Lynwood Redevelopment Agency	03-07-2011	\$5,660,000	Redevelopment, multiple purposes
Monrovia Redevelopment Agency	04-12-2011	\$8,000,000	Multifamily housing
Santa Monica Redevelopment Agency	06-03-2011	\$41,050,000	Redevelopment, multiple purposes
Signal Hill Redevelopment Agency	03-25-2011	\$8,835,000	Redevelopment, multiple purposes
Vernon Redevelopment Agency	03-01-2011	\$19,490,000	Redevelopment, multiple purposes
West Hollywood Community Development Commission	03-02-2011	\$9,420,000	Multifamily housing
West Hollywood Community Development Commission	03-02-2011	\$30,560,000	Redevelopment, multiple purposes
<b>TOTAL \$260,112,887</b>			

This office opposes AB 2493 because it would result in a decrease in the amount of property tax revenues available for use to pay off other approved enforceable obligations or for distribution to other taxing entities as residual property tax revenues

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for up to 30 years. **Therefore, unless otherwise directed by the Board, consistent with existing policy to oppose proposals that would eliminate or reduce or delay the flow of any source of funds allocated to taxing entities by ABx1 26 (Chapter 5, Statutes of 2011) as amended by AB 1484 (Chapter 26, Statutes of 2012), the Sacramento advocates will oppose AB 2493.**

AB 2493 passed the Senate Transportation and Housing Committee by a vote of 9 to 1 on June 17, 2014. This measure will be heard in the Senate Governance and Finance Committee on June 25, 2014.

AB 2493 is supported by the cities of: Culver City, Glendale; Lynwood; Santa Monica; and West Hollywood, as well as the California Building Industry Association; Housing California; League of California Cities; and the West Hollywood Chamber of Commerce.

This measure is opposed by the California Special Districts Association, California State Association of Counties, and County of Santa Clara.

We will continue to keep you advised.

WTF:RA  
MR:VE:IGEA:ma

c: All Department Heads  
Legislative Strategist